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Supreme Court of the United States

OCTOBER TERM, 1949

No. 271

ALCOA STEAMSHIP COMPANY, INC.,

*Petitioner,*

VS.

UNITED STATES OF AMERICA,

*Respondent.*

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**BRIEF OF STOCKARD STEAMSHIP CORPORATION  
AS AMICUS CURIAE IN SUPPORT OF THE PETITION  
FOR CERTIORARI AND MOTION FOR LEAVE TO  
FILE BRIEF**

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HAROLD S. DEMING,  
Counsel for Stockard Steamship Corporation,  
as *Amicus Curiae*.

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## MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

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The undersigned, as counsel for Stockard Steamship Corporation, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiae* in support of the Petition for *Certiorari*.

HAROLD S. DEMING,  
Counsel for Stockard Steamship Corporation  
as *Amicus Curiae*.

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## **BRIEF OF STOCKARD STEAMSHIP CORPORATION AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR *CERTIORARI***

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### **Statement**

Stockard Steamship Corporation has a vital interest in the decision of the novel issue involved in the instant petition. Stockard Steamship Corporation is the libellant in a suit in the Southern District of New York for \$73,408.52 for compensation admittedly due from the United States under a general agency contract, but withheld so as to be applied against sums allegedly overpaid by the United States to Stockard on account of freight moneys earned under previous transportation contracts.

\$70,458.42 of the amount so withheld represents freight previously paid by the United States under a contract of affreightment for the carriage of army cargo aboard the s/s William J. Salman which was lost by enemy action before the cargo could be delivered.

This cargo, like that in the instant case, was shipped under the standard government form of bill of lading, and the Stockard form of bill of lading incorporated therein by reference contained provisions substantially identical with those construed by the court below in the instant case.

Payment of the freight on this shipment was made by the United States without question pursuant to what had been the long settled interpretation by the government of the applicable provisions of the bill of lading.

Subsequently the government, on the basis of the same contentions put forward in the instant case, reversed its position and recouped from moneys admittedly due to Stockard the freight previously unquestioningly paid.

### **The Issue**

The issue raised is whether the government as a shipper is *specifically* exempt under the terms of the standard government bill of lading from the customary liability of shippers for freight where delivery of the cargo has been prevented by causes for which the carrier is not liable, where such freight liability is specifically provided for in the carrier's form of bill of lading incorporated by reference in the contract of carriage.

### **Reasons Why Certiorari Should Be Granted**

As a general carrier of goods by water vitally affected by the decision of the instant issue, Stockard Steamship Corporation is fully in agreement with the reasons for granting certiorari and the supporting arguments set forth in the Petition and the accompanying Brief. Those reasons and arguments and the additional reasons set forth in the Brief Amicus Curiae which it is understood Waterman Steamship Corporation has moved for permission to file amply demonstrate, it is respectfully submitted, the widespread importance of a review of the question by this Court.

Stockard Steamship Corporation, therefore, wishes merely to advert briefly to a few of the errors in the decision below which most strongly emphasize in relation to the pending Stockard suit the unfairness of the impact of the novel rule enunciated by the Court below.

1. The government's present contention that unlike every private shipper it is exempt under its form of bill of lading from the customary liability for freight even though delivery of the cargo at destination is prevented by an excepted cause is a reversal of a longstanding government interpretation and policy. 24 Dec. Comp. Tréas. 707 (1918); 21 Comp. Gen. 909, 913 (1942). The action of the court below in sustaining this sudden reversal of position is directly contrary to firmly accepted standards of interpretation. The decision of the court below emphasizes the *power* of the government to exempt itself from the customary obligations regarding freight. Because the government *could*, the court below infers that it *intended* to and *did* do so. On the contrary, the fact that the government itself drew the controlling bill of lading and could draw it on its own terms means under settled principles of construction that the bill of lading must be construed in the case of any ambiguity *against* the government.

The necessity of such a construction is, of course, greatly emphasized by the fact that the government, as above pointed out, adopted and acted upon over a period of many years an interpretation directly opposed to that for which it now contends.

2. The sudden and belated reversal of position by the government operates as a great hardship on Stockard Steamship Corporation and other companies which made all their arrangements and commitments in reliance on the long accepted and natural interpretation of the language involved. And, of course, any future shipments which Stockard Steamship Corporation and other general carriers of goods by water may make under the government form

of bill of lading will be subject to indeterminate risks until this question, which it is understood is now in suit in other circuits as well, is determined by this court.

### CONCLUSION

**It is respectfully submitted that certiorari should be granted.**

Respectfully submitted,

HAROLD S. DEMING,  
Counsel for Stockard Steamship Corporation,  
as *Amicus Curiae*.